

EXHIBIT 1

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Attorneys for Plaintiff Blendtec Inc.

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

BLENDTEC INC., a Utah corporation,

Plaintiff,

vs.

BLENDJET INC., a Delaware corporation,

Defendant.

**DECLARATION OF JON KEITH
TITUS IN SUPPORT OF
MARKETSTAR'S OPPOSITION TO
BLENDJET'S MOTION TO COMPEL
RESPONSE TO SUBPOENA TO
MARKETSTAR**

Civil No. 2:21-cv-00668-TC-DBP

Judge Tena Campbell
Magistrate Judge Dustin B. Pead

I JON KEITH TITUS declare as follows:

1. I am the Chief Executive Officer ("CEO") for MarketStar. I am familiar with the subpoena that Defendant Blendjet Inc. ("Blendjet") served on MarketStar on or around December 19, 2022, in connection with the lawsuit for trademark infringement brought by Plaintiff Blendtec Inc. against Blendjet (the "Lawsuit"). I am familiar with the objections that MarketStar served to

the subpoena on January 3, 2023. I submit this declaration in support of MarketStar's Opposition to Blendjet's Motion to Compel Response to Subpoena to MarketStar. I am fully familiar with the facts set forth in this declaration from personal knowledge or from documents that I have reviewed. If called as a witness, I could and would testify competently under oath to the facts contained herein.

2. MarketStar is not a party to the Lawsuit.
3. MarketStar is not in the blender business. MarketStar is a marketing and sales company that provides outsourced marketing and sales services to its customers.
4. Blendtec is not currently a MarketStar customer. MarketStar has never provided marketing services to Blendtec.
5. The only affiliation between MarketStar and Blendtec is that they are both owned and controlled by Wasatch Capital. Wasatch Capital took a controlling interest in Blendtec on or around July 1, 2021. Further, although MarketStar and Blendtec have shared a common owner since July 2021, MarketStar is a separate and distinct company from Blendtec.
6. At the time that Wasatch Capital took a controlling interest in Blendtec on July 1, 2021, it appointed me to be the transition or interim CEO for Blendtec. I have served as Blendtec interim CEO since that time. As stated, I am also the CEO of MarketStar. At the same time, Wasatch Capital appointed Ben Kaufman to be the transition or interim Chief Financial Officer ("CFO") for Blendtec. Ben Kaufman, who is also the CFO of MarketStar, has served as Blendtec Interim CFO since his appointment to that position in July 2021.
7. In connection with my work for Blendtec, I predominately use a Blendtec email address.

8. I understand that Ben Kaufman also has a Blendtec email address. I also understand that, due to some problems he has had with his Blendtec email address, Mr. Kaufman often uses his MarketStar email account in connection with his Blendtec work.

9. With the exception of documents and emails that I have and that Mr. Kaufman has through our roles at Blendtec, MarketStar does not have access to the books, records, files, electronic information, or other documents belonging to and/or relating to Blendtec. Similarly, with the exception of those same documents and emails, Blendtec does not have access to the books, records, files, electronic information, or other documents belonging to and relating to MarketStar.

10. I have reviewed Blendjet's motion to compel MarketStar to respond to the subpoena. Blendjet's primary argument is that MarketStar possesses documents that are responsive to the subpoena. *See* Blendjet's Motion to Compel (ECF 78) at 2 ("There is no dispute that MarketStar possesses documentation responsive to the Subpeona."). *Id.* As stated above, however, MarketStar does not have access to Blendtec's documents or information. The subpoena seeks documents related to Blendtec, the blender market, Blendjet, and the Lawsuit. *See* ECF 78-5. Those documents are in the possession of Blendtec. To the extent that MarketStar possesses the documents, it is in connection with my work and Mr. Kaufman's work as Blendtec CEO and CFO. Blendtec has already agreed to produce documents responsive to Blendjet's email production requests to myself and Mr. Kaufman. Thus, the only responsive documents that MarketStar is likely to have in its possession are already being produced by Blendtec.

11. In fact, I understand that Blendjet has requested most of the documents subject to the subpoena from Blendtec, and that Blendtec has already produced documents responsive to the


majority of the requests in the subpoena.

12. To be specific, based on my review of the requests in the subpoena, I believe that all of the documents requested by Blendjet are within the possession, custody, or control of Blendtec and should be requested from Blendtec.

13. For these reasons, Blendjet's subpoena is improper. Blendjet should not be permitted to burden MarketStar with a subpoena when it can get the documents from Blendtec.

14. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

DATED this 24th day of February, 2023.



Jon Keith Titus

CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of February, 2023, a true and correct copy of the foregoing document was filed with the Court's CM/ECF system and served on the following counsel of record via the CM/ECF notification system:

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/s/ Tamara L. Kapaloski